

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

IN THE SENATE

SENATE BILL NO. 1093

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO ANNEXATION; AMENDING CHAPTER 2, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-221A, IDAHO CODE, TO PROVIDE A NOTICE OF INTENT TO ANNEX AND TO PROVIDE PROCEDURES FOR AN ELECTION FOR CERTAIN PARCELS; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE WHEN ELECTION PROVISIONS APPLY FOR CERTAIN PARCELS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-221A, Idaho Code, and to read as follows:

50-221A. NOTICE OF INTENT TO ANNEX -- ELECTION. (1) Before annexing adjacent territory containing less than one hundred (100) privately owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city with a population of less than eight thousand (8,000) or which are bounded on all sides by lands within a city with a population of less than eight thousand (8,000) and by the boundary of the city's area of impact or contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation and a sufficient number of persons protest the annexation, a city shall pass an ordinance declaring its intent to do so. The ordinance shall be adopted in compliance with all state and local laws and rules governing the adoption of an ordinance. After passing said ordinance of a city to annex adjacent territory, the city council shall have printed in the city's official newspaper as defined in section 50-213, Idaho Code, a legal notice of the city's intent to annex the territory and that a public hearing will be held regarding the proposed annexation. The legal notice shall contain the time, date and place of the hearing and a clear and unambiguous description of the area proposed to be annexed, why the city desires to annex the property and what public purpose annexation will serve, what services the city will be providing to the annexed property and residents of that property, a time limit on providing the services and if taxes are to be collected that they will be returned if services are not provided within a date when the services were initially promised to be provided and shall be printed for at least fourteen (14) days. As used in this section services shall include, but not be limited to, police, fire, paramedics, sewer, waste disposal or water. The notice shall also clearly and unambiguously describe the right of any person, natural or legal, to protest the proposed annexation. Within one (1) week after the last legal notice has been published, the city council shall hold a formal public hearing to give the residents of the affected area and any other interested person a chance to protest the proposed annexation. The hearing shall be scheduled for a time and date, and held in such a manner

1 as to maximize the opportunity for affected parties to attend and be heard.
2 In addition to the legal notice specified in this subsection, a notice of
3 hearing shall be printed in the city's official newspaper as defined in sec-
4 tion 50-213, Idaho Code, for seven (7) days prior to the hearing. If, for any
5 reason, the hearing required in this subsection is postponed or is continued
6 after it is opened, notice for the postponed or continued hearing shall con-
7 form to the content and minimum time limits provided in this subsection.

8 (2) Any person or business, whether a resident of the territory pro-
9 posed to be annexed, a resident of the city with a population of less than
10 eight thousand (8,000) proposing to annex the territory, or a resident of the
11 area of impact of the city proposing to annex the territory, shall have the
12 right to protest the annexation orally or in writing. A protest includes any
13 objection to the proposed annexation in whole or in part. If no oral protests
14 are received by the council at the public hearing or no written protests are
15 received from property owners that may protest pursuant to section 50-222,
16 Idaho Code, by the city council, city attorney's office, city clerk, the of-
17 fice of the mayor, or the planning and zoning board of the city within five
18 (5) business days after the close of the public hearing required in subsec-
19 tion (1) of this section, the city council may proceed with annexation pro-
20 ceedings as defined in sections 50-222 through 50-224, Idaho Code.

21 (3) If any oral or written protests are received by the council from
22 the property owners that may protest pursuant to section 50-222, Idaho Code,
23 in the area proposed to be annexed, an election shall be held on one (1) of
24 the dates specified in section 34-106, Idaho Code, and polling places estab-
25 lished in the area to be annexed for the purpose of submitting to the quali-
26 fied electors residing in the area to be annexed, the question of whether the
27 proposed area shall be annexed into the city. Such election shall be con-
28 ducted by the county where the city is located which is proposing annexation
29 of the adjacent territory, in a manner prescribed by chapter 4, title 50,
30 Idaho Code, for general city elections. The county where the city proposing
31 annexation is located shall incur all costs of the election and shall be re-
32 imbursement by the city proposing annexation. A qualified elector may cast only
33 one (1) vote in the election regardless of the number of parcels that quali-
34 fied elector owns.

35 (4) Only if a majority of votes cast by electors in the election favor
36 annexation may the council then proceed with the annexation proceedings as
37 defined in sections 50-222 through 50-224, Idaho Code.

38 (5) If, upon canvassing of the votes, it is determined that a majority
39 of the qualified electors who voted in the election favored annexation, the
40 clerk of the county shall, by abstract of the results of the election, cer-
41 tify the fact to the board of county commissioners. The clerk of such board
42 shall thereupon record the same and transmit said original abstract of the
43 result of the election to the office of the secretary of state. The origi-
44 nal abstract shall be filed by the secretary of state in his office immedi-
45 ately upon receiving the same, and certificates of the filing of such origi-
46 nal abstract in his office shall be transmitted to the clerk of the board of
47 the county commissioners and to the clerk of the city. The date of annexation
48 shall be October 1 next following the election and the perfection of the re-
49 quired processes as specified in sections 50-222 through 50-224, Idaho Code.

(6) The provisions of this section shall not apply to applications or requests for annexation made by property owners requesting that the owner's property be annexed. The provisions of this section shall apply only to annexations initiated by cities.

SECTION 2. That Section 50-222, Idaho Code, be, and the same is hereby amended to read as follows:

50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

(3) Annexation classifications. Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:

(a) Category A: Annexations wherein:

(i) All private landowners have consented to annexation. Annexation where all landowners have consented may extend beyond the city area of impact provided that the land is contiguous to the city and that the comprehensive plan includes the area of annexation;

(ii) Any residential enclaved lands of less than one hundred (100) ~~privately-owned~~ privately owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by the boundary of the city's area of impact, provided that if more than twenty-five percent (25%) of the owners of such land file a written protest to such annexation, in which case an election shall be held pursuant to section 50-221A, Idaho Code; or

(iii) The lands are those for which owner approval must be given pursuant to subsection (5) (b) (v) of this section.

(b) Category B: Annexations wherein:

(i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation, provided that if more than twenty-five percent (25%) of the owners of such land

1 file a written protest to such annexation, in which case an elec-
 2 tion shall be held pursuant to section 50-221A, Idaho Code; or

3 (ii) The subject lands contain more than one hundred (100) sep-
 4 arate private ownerships and platted lots of record and where
 5 landowners owning more than fifty percent (50%) of the area of the
 6 subject private lands have consented to annexation prior to the
 7 commencement of the annexation process; or

8 (iii) The lands are the subject of a development moratorium or a
 9 water or sewer connection restriction imposed by state or local
 10 health or environmental agencies; provided such lands shall not be
 11 counted for purposes of determining the number of separate private
 12 ownerships and platted lots of record aggregated to determine the
 13 appropriate category.

14 (c) Category C: Annexations wherein the subject lands contain more
 15 than one hundred (100) separate private ownerships and platted lots of
 16 record and where landowners owning more than fifty percent (50%) of the
 17 area of the subject private lands have not consented to annexation prior
 18 to commencement of the annexation process.

19 (4) (a) Evidence of consent to annexation. For purposes of this sec-
 20 tion, and unless excepted in paragraph (b) of this subsection ~~(4)~~,
 21 consent to annex shall be valid only when evidenced by written instru-
 22 ment consenting to annexation executed by the owner or the owner's
 23 authorized agent. Written consent to annex lands must be recorded in
 24 the county recorder's office to be binding upon subsequent purchasers,
 25 heirs, or assigns of lands addressed in the consent. Lands need not be
 26 contiguous or adjacent to the city limits at the time the landowner con-
 27 sents to annexation for the property to be subject to a valid consent to
 28 annex; provided however, no annexation of lands shall occur, irrespec-
 29 tive of consent, until such land becomes contiguous or adjacent to such
 30 city.

31 (b) Exceptions to the requirement of written consent to annexation.
 32 The following exceptions apply to the requirement of written consent
 33 to annexation provided for in ~~subsection (4)~~ paragraph (a) of this
 34 subsection:

35 (i) Enclaved lands: In category A annexations, no consent is nec-
 36 essary for enclaved lands meeting the requirements of subsection
 37 (3) (a) (ii) of this section;

38 (ii) Implied consent: In category B and C annexations, valid con-
 39 sent to annex is implied for the area of all lands connected to a
 40 water or wastewater collection system operated by the city if the
 41 connection was requested in writing by the owner, or the owner's
 42 authorized agent, or completed before July 1, 2008.

43 (5) Annexation procedures. Annexation of lands into a city shall fol-
 44 low the procedures applicable to the category of lands as established by this
 45 section. The implementation of any annexation proposal wherein the city
 46 council determines that annexation is appropriate shall be concluded with
 47 the passage of an ordinance of annexation.

48 (a) Procedures for category A annexations: Lands lying contiguous or
 49 adjacent to any city in the state of Idaho may be annexed by the city
 50 if the proposed annexation meets the requirements of category A. Upon

1 determining that a proposed annexation meets such requirements, a city
2 may initiate the planning and zoning procedures set forth in chapter 65,
3 title 67, Idaho Code, to establish the comprehensive planning policies,
4 where necessary, and zoning classification of the lands to be annexed.

5 (b) Procedures for category B annexations: A city may annex lands that
6 would qualify under the requirements of category B annexation if the
7 following requirements are met:

8 (i) The lands are contiguous or adjacent to the city and lie
9 within the city's area of city impact;

10 (ii) The land is laid off into lots or blocks containing not more
11 than five (5) acres of land each, whether the same shall have been
12 or shall be laid off, subdivided or platted in accordance with any
13 statute of this state or otherwise, or whenever the owner or pro-
14 prietor or any person by or with his authority has sold or begun to
15 sell off such contiguous or adjacent lands by metes and bounds in
16 tracts not exceeding five (5) acres, or whenever the land is sur-
17 rounded by the city. Splits of ownership which occurred prior to
18 January 1, 1975, and which were the result of placement of public
19 utilities, public roads or highways, or railroad lines through the
20 property shall not be considered as evidence of an intent to de-
21 velop such land and shall not be sufficient evidence that the land
22 has been laid off or subdivided in lots or blocks. A single sale
23 after January 1, 1975, of five (5) acres or less to a family mem-
24 ber of the owner for the purpose of constructing a residence shall
25 not constitute a sale within the meaning of this section. For pur-
26 poses of this section, "family member" means a natural person or
27 the spouse of a natural person who is related to the owner by blood,
28 adoption or marriage within the first degree of consanguinity;

29 (iii) Preparation and publication of a written annexation plan,
30 appropriate to the scale of the annexation contemplated, which in-
31 cludes, at a minimum, the following elements:

32 (A) The manner of providing tax-supported municipal ser-
33 vices to the lands proposed to be annexed;

34 (B) The changes in taxation and other costs, using examples,
35 which would result if the subject lands were to be annexed;

36 (C) The means of providing fee-supported municipal ser-
37 vices, if any, to the lands proposed to be annexed;

38 (D) A brief analysis of the potential effects of annexation
39 upon other units of local government which currently provide
40 tax-supported or fee-supported services to the lands pro-
41 posed to be annexed; and

42 (E) The proposed future land use plan and zoning designation
43 or designations, subject to public hearing, for the lands
44 proposed to be annexed;

45 (iv) Compliance with the notice and hearing procedures governing
46 a zoning district boundary change as set forth in section 67-6511,
47 Idaho Code, on the question of whether the property should be
48 annexed and, if annexed, the zoning designation to be applied
49 thereto; provided however, the initial notice of public hearing
50 concerning the question of annexation and zoning shall be pub-

lished in the official newspaper of the city and mailed by first class mail to every property owner with lands included in such annexation proposal not less than twenty-eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one (1) page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property, owned by a county or any entity within the county, that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies; and

(B) Property, owned by a nongovernmental entity, that is used to provide outdoor recreational activities to the public and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services must have the express written permission of the nongovernmental entity owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

1 (ii) Evidence of consent to annexation based upon the following
2 procedures:

3 (A) Following completion of all procedures required for
4 consideration of a category B annexation, but prior to en-
5 actment of an annexation ordinance and upon an affirmative
6 action by the city council, the city shall mail notice to
7 all private landowners owning lands within the area to be
8 annexed, exclusive of the owners of lands that are subject
9 to a consent to annex which complies with subsection (4) (a)
10 of this section defining consent. Such notice shall invite
11 property owners to give written consent to the annexation,
12 include a description of how that consent can be made and
13 where it can be filed, and inform the landowners where the
14 entire record of the subject annexation may be examined.
15 Such mailed notice shall also include a legal description of
16 the lands proposed for annexation and a simple map depicting
17 the location of the subject lands.

18 (B) Each landowner desiring to consent to the proposed an-
19 nexation must submit the consent in writing to the city clerk
20 by a date specified in the notice, which date shall not be
21 later than forty-five (45) days after the date of the mailing
22 of such notice.

23 (C) After the date specified in the notice for receipt of
24 written consent, the city clerk shall compile and present
25 to the city council a report setting forth: (i) the total
26 physical area sought to be annexed, and (ii) the total phys-
27 ical area of the lands, as expressed in acres or square feet,
28 whose owners have newly consented in writing to the annexa-
29 tion, plus the area of all lands subject to a prior consent to
30 annex which complies with subsection (4) (a) of this section
31 defining consent. The clerk shall immediately report the
32 results to the city council.

33 (D) Upon receiving such report, the city council shall re-
34 view the results and may thereafter confirm whether consent
35 was received from the owners of a majority of the land. The
36 results of the report shall be reflected in the minutes of
37 the city council. If the report as accepted by the city coun-
38 cil confirms that owners of a majority of the land area have
39 consented to annexation, the city council may enact an ordi-
40 nance of annexation, which thereafter shall be published and
41 become effective according to the terms of the ordinance.
42 If the report confirms that owners of a majority of the land
43 area have not consented to the annexation, the category C
44 annexation shall not be authorized.

45 (6) The decision of a city council to annex and zone lands as a category
46 B or category C annexation shall be subject to judicial review in accordance
47 with the procedures provided in chapter 52, title 67, Idaho Code, and pur-
48 suant to the standards set forth in section 67-5279, Idaho Code. Any such ap-
49 peal shall be filed by an affected person in the appropriate district court
50 no later than twenty-eight (28) days after the date of publication of the an-

1 nexation ordinance. All cases in which there may arise a question of the va-
2 lidity of any annexation under this section shall be advanced as a matter of
3 immediate public interest and concern, and shall be heard by the district
4 court at the earliest practicable time.

5 (7) Annexation of noncontiguous municipal airfield. A city may annex
6 land that is not contiguous to the city and is occupied by a municipally owned
7 or operated airport or landing field. However, a city may not annex any other
8 land adjacent to such noncontiguous facilities which is not otherwise annex-
9 able pursuant to this section.

10 SECTION 3. This act shall be in full force and effect on and after July
11 1, 2015. Any annexation pending a legal decision by a court currently con-
12 sidering said annexation that overturns the ordinance to annex would become
13 subject to this act.